BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

TERESA HETTINGER	)	
Claimant	)	
	)	
VS.	)	
	)	
COF TRAINING SERVICES, INC.	)	
Respondent	)	Docket No. **262,118**
	)	
AND	)	
	)	
TRAVELERS INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent requests review of a preliminary Order entered by Administrative Law Judge Julie A.N. Sample on July 25, 2001.

ISSUES

The Administrative Law Judge ordered that claimant be provided medical treatment with Dr. Richard Bene. The Order further provided that all medical bills that pre-date the Application for Preliminary Hearing are held in abeyance pending final resolution of the claim.

The issues raised on review by respondent and its insurance carrier include: (1) whether claimant's accidental injury arose out of and in the course of employment on the date alleged; (2) whether the claimant's need for medical treatment is causally related to the alleged accident date of December 18, 2000, or a January 12, 2000, accident for which claimant failed to provide timely notice; and, (3) whether the Administrative Law Judge erred in not providing findings of fact.

Conversely, the claimant contends the decision granting medical treatment with Dr. Bene be affirmed and requests all medical bills incurred prior to the Application for Preliminary Hearing be ordered paid.

FINDINGS OF FACT

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant testified that on December 18, 2000, she was loading a wheelchair bound client onto a van. She reached across the client to push the lift button and experienced pain in the middle finger of her left hand. She reported the incident that day to her immediate supervisor, Tim Morgan.

The claimant had previously strained that same finger in January 2000 while restraining a client but was able to continue using her finger after that incident. The claimant testified that after the incident on December 18, 2000, she was unable to use the finger because it was swollen and wouldn't straighten or bend. The claimant testified that she also reported the incident to Denny Hawkins, the plant manager and requested medical treatment. Claimant testified that Mr. Hawkins approved her request.

The claimant sought treatment with her family physician, Dr. Braun. Dr. Braun's office notes of claimant's December 20, 2000, office visit contain a history of an injury approximately a year ago with increasing difficulty over the past several months. Her finger was splinted and she was referred to Dr. Knappenberger. The claimant saw Dr. Knappenberger on January 8, 2001, and the history provided the doctor noted the pain and soreness in claimant's left middle finger initially began in January 2000 but that claimant had more recently reinjured the finger.

The claimant was provided an employee accident report form to complete the day after the accident. The report was completed referring to the incident in January 2000 where claimant had injured the middle finger of her left hand while restraining a disruptive client. The claimant noted that date was used because her finger was already injured before the second incident. The claimant testified that she asked her supervisor if she needed to fill out a separate accident report form for the second injury that had just occurred and was told no.

The original report was returned because it did not contain a description of the incident, date or claimant's signature. Claimant testified that when the form was returned she added to the report the December 18 date and what had happened. The employee accident report form offered as an exhibit at the preliminary hearing does not contain any reference to the December 18, 2000, incident.

The claimant was interviewed on January 2, 2001, by an adjuster for respondent's workers compensation insurance carrier regarding her claimed injury. The claimant detailed the incident where she injured her finger restraining the combative client in January 2000 and how her finger had gradually worsened. The claimant also specifically

noted the incident pushing the button on the lift and related that she had advised her supervisor after that incident that she needed treatment for her finger.

Mr. Tim Morgan, respondent's vocational supervisor denied claimant told him about the December 18, 2000, incident. He testified that in December 2000 when claimant first advised him that she had injured her middle finger she had only referred to the January 2000 incident where she had sustained the injury restraining the combative client. Mr. Morgan testified that he first became aware of the December 18, 2000, incident when Mr. Hawkins had asked him if he was aware of another incident. Mr. Morgan could not recall the date that conversation occurred.

Ms. Vickie Delatorre, respondent's human resources director, testified that the original employee accident report form did not contain a date of injury and she returned the form for completion. She testified that when the form was returned it only referred to the January 2000 incident and she never received a form with a December 18, 2000, date of accident.

Mr. Dennis Hawkins, respondent's supervisor of vocational services, testified that claimant had discussed the January 2000 incident with him and had asked if he thought it would be covered by workers compensation. He testified that he told claimant he did not think so but told her she could fill out a form and he would process it. Mr. Hawkins did admit that claimant advised him later that she hurt her finger on the button lift but he could not recall whether claimant requested a new accident report be completed.

CONCLUSIONS OF LAW

The Workers Compensation Act places the burden of proof upon claimant to establish her right to an award of compensation and to prove the conditions on which that right depends.[1] "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."[2]

[1]K.S.A. 44-510(a); *see also* Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993) and Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

[2]K.S.A. 44-508(g). *See also* *In re* Estate of Robinson, 236 Kan. 431, 690 P.2d 1383 (1984).

An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment.[3] Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.[4]

The respondent initially contends the evidence establishes claimant was seeking treatment for an injury that occurred in January 2000. Because claimant allegedly did not give notice of injury until December 2000, respondent contends the claim should be denied.

Although the respondent has focused on the first injury that claimant sustained in January 2000, the claimant's uncontradicted testimony was that she sustained a new injury to the same finger. She noted that after the second injury she was no longer able to use the finger and needed medical treatment. The claimant testified that she told her supervisor about her second injury the same day. Although the supervisor could not recall when the conversation occurred, he confirmed that he had been advised of the injury that claimant had sustained when she had pushed the button on the lift. The insurance adjustor was also advised of the incident.

When the claimant sought treatment with her family physician she just referred to the January 2000 incident, but a few days later when she saw the orthopedist she informed him that she had reinjured her finger. That was corroborated by the history of the incident that claimant gave the insurance adjuster.

As noted above, there is some conflicting testimony in this case. The claimant and one of her supervisors as well as respondent's human resource director all testified in person before the Administrative Law Judge. There is contradictory testimony regarding whether claimant provided notice of the December 18, 2000 work-related injury. Thus, credibility is at issue. The Administrative Law Judge had the opportunity to assess the witnesses' demeanor. In this case, the Administrative Law Judge believed the claimant and specifically determined that respondent had notice of claimant's December 18, 2000, accidental injury. Under this circumstance, where conflicting testimony exists, the Board finds some deference should be given to the Administrative Law Judge's evaluation of the witnesses' credibility. The Board, therefore, taking into consideration the Administrative Law Judge's opportunity to assess the witnesses' credibility, affirms the Administrative Law Judge's decision that claimant gave timely notice of the December 18, 2000, work-related injury.

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[3] Brobst v. Brighton Place North, 24 Kan. App.2d 766,771, 955 P.2d 1315 (1997).

[4] Springston v. IML Freight, Inc., 10 Kan. App.2d 501, 704 P.2d 394, *rev. denied* 238 Kan. 878 (1985).

The claimant has met her burden of proof to establish that she sustained an accidental injury on December 18, 2000, and was seeking medical treatment because of that injury.

Respondent objects to the Order of the Administrative Law Judge, alleging the Administrative Law Judge failed to make specific findings with regard to the particular issues in contention. At the preliminary hearing, respondent's defenses included whether claimant suffered accidental injury arising out of and in the course of his employment and whether appropriate and timely notice was provided. In order to grant benefits, the Administrative Law Judge would be required to find in claimant's favor on those issues. Therefore, while the Administrative Law Judge did not specifically state in the Order her findings with regard to those issues, her ruling is interpreted as a finding in claimant's favor.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.[5]

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Julie A.N. Sample dated July 25, 2001, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of September 2001.

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BOARD MEMBER

c: Michael G. Patton, Attorney for Claimant
Randall w. Schroer, Attorney for Respondent and Insurance Carrier
Julie A.N. Sample, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

[5]K.S.A. 44-534a(a)(2).